

USAToday - GM sued over automobile 'black boxes'

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NEWARK, N.J. (Bloomberg) — General Motors is battling a lawsuit alleging that it violates customer privacy by installing a "black box" in its vehicles to record critical data about speed, braking, and seat belt use, in the moments before a crash. The suit, which seeks class-action status, alleges that the world's largest automaker never told motorists about the devices, known as sensing diagnostic modules (SDM). GM says SDMs, which are part of the air-bag systems, help it design safer cars and aid investigators in reconstructing accidents. But the complaint claims GM failed to inform motorists about the existence of the devices or what they do.

Motorists never learned that "it would be possible for GM, or anyone else to whom GM provided the data surreptitiously recorded by the SDM, to invade the driver's privacy and monitor the particular driver's driving characteristics and seatbelt use habits at a particular point in time," the lawsuit alleges.

The lawsuit targets the 1999 model year or later for eight cars: the Chevrolet Corvette and Camaro; the Pontiac Firebird; the Cadillac DeVille, El Dorado, and Seville; and the Buick Century and Park Avenue.

This week, GM filed a motion to transfer the lawsuit from state court in Middlesex County, NJ to federal court in Newark. The complaint alleges GM violated New Jersey's Consumer Fraud Act, invaded the privacy of drivers, and failed to get their consent for the devices. A GM spokeswoman said it is the only case of its type in the country.

GM began installing the devices, which are similar to black boxes on airplanes, in the early 1990s. Since then, their capabilities have grown, and, since 1999, the amount of data recorded has greatly increased.

GM disclosure

Sensing diagnostic modules gained widespread attention after GM disclosed their existence at a technical conference in May 1999.

GM spokeswoman Kelly Cusinato denied that the company failed to inform customers, saying that owner's manuals indicate that some vehicles are equipped with devices that record data about the integrity of the airbag system.

The manual for the 1999 Cadillac DeVille said that some modules also

record speed, engine RPM, brake, and throttle data.

"We think that our collection and use of the data is legal and appropriate," Cusinato said. "When accidents occur, the device is providing a level of precision that you may not have otherwise in a crash situation."

She said GM engineers or other people can buy software from Vetronix of Santa Barbara, Calif., enabling them to download and interpret the data. GM only seeks to gain access to the data after the company learns of an accident and gains permission from the car's owner or leasee, she said.

Owner permission

"Our policy is that we have to get the vehicle owner or leasee's permission," Cusinato said. "If the owner requests it, they can get a copy of downloaded data. But we're not in the business of providing this information to third parties."

However, attorney Roy A. Katriel, who represents plaintiff Sherry Valan, said that despite the sentence in the owner's manual, GM never adequately disclosed what data was collected and how it may be used.

"In most instances, the recording has been taking place without the owners ever knowing about it," said Katriel. "It raises very troubling questions about informed consent."

The lawsuit alleges that GM also has used the data against at least one car owner to defend a product liability suit.

Katriel said that GM employees also may have access to the data without a driver's consent if a car is totaled in an accident and an insurance company takes ownership of the car.

But Cusinato said that GM would only gather the data from an insurance company if the driver gave his consent. She also said that the company may seek to subpoena data in some instances to defend against a lawsuit.

One New Jersey attorney not involved in the lawsuit said that police and prosecutors, who could benefit from the data in accident reconstructions, are unaware of its existence.

Thomas J. Vesper, a past president of the New Jersey chapter of the Association of Trial Lawyers of America, said he organized a seminar for prosecutors and police early this year after learning of the device.

"Every one of the police officers and prosecutors that I spoke to didn't have a clue about this," said Vesper.